1900-025 Chancery Causes: B. F. Kincaid vs. Dr. M. Arthur
Lee Co.

CA- Contract Dispute
T- Property

To the Hon.H.A.W.Skeen,Judge of the Circuit court for Lee County:-

Humbly complaining your orator,B.F.Kincaid,a citizen of Lee County,Virginia,would respectfully represent and show unto your honor that about the first of the year of 1899,one Dr.M.Arthur, a citizen of the State of Kentucky then and now,representing to your orator that he had contracts with large iron furnaces to furnish them with large quantities of iron ore,to fill which contracts it was necessary for him to obtain leases of lands and push with energy mining operations on a large scale,and with these representations approached your orator and asked that your orator enter into a contract with him the said Arthur,giving to him the said Arthur,the right to mine and dig iron ore upon certain lands situated in the western portion of Lee County, and on the farm known as the Alexander Ewing farm,which was then and is now owned by your said orator;and the said Arthur having furthur represented to your orator that ,if said lands were leased him, he would begin within one week after the date of the contract to operate and mine said ore,and that he would pay to your orator the sum of 10 cents per ton for all ore mined from said lands;and your orator confiding in the representations and promises made by the said Arthur,was fraudulently induced to sign a contract of leasing to said Arthur,the consideration and inducement of which was the promises and representations made by the said Arthur that he had a market for a large quantity of ore,that as he had such market he would have mined a very large quantity of ore from the said lands and that the royalties to be derived therefrom would be very considerable at the price per ton above set out; But your orator will represent and show unto your honor that he has been greatly deceived,defrauded and damaged by the said representations of the said Arthur,because said representations and promises to mine said ore were false,and will show unto your honor that the said Arthur never had any such contracts as he represented to have had to furnish ore to any furnaces,that he was not then and never has been since in the business of mining of any kind;that he had no

capital whatever to prosecute the maning operatins he had contracted to do on the lands of your said ortor;that at the time that he entered into the said contract with your said orator he did not intend to mine the said ore;and your orator alleges and will show unto your honor that the said Arthur was a mere speculator and not an operator of mines;that he took this contract,which he obtained by false representations,hoping that he might transfer it to some party for a profit,and not having been able to do so,he has by reason of his fraud,deprived your orator of the royalties he could have otherwise gotten from parties who have been willing and anxious to mine said ore upon said land;Your orator alleges and will show that there was no other consideration supporting said contract other than those set out above,and will show that said consideration has wholy failed.

Your orator will furthur represent and show unto your honor that there was only one copy of the said contract made,which was delivered over to the said Arthur,that your orator has frequently called upon said Arthur to see the same and have a copy of it, but the said Arthur has always failed and refused either to let your orator see the contract or to have a copy thereof,your orator can not,therefore,set out in detail all the matters in said contract,but your orator alleges,and will show unto your honor,that the only intention of the contract was to give the said Arthur the right to mine said ore if he would go to work as he had promised, that if he did not go to work as he had promised,then the said contract was to become non-effective; and your orator will furthur represent and show unto your honor that since the said contract was entered into untill this date the said Arthur has ever refused and failed to operate said mines,that he has utterly disregarded the rights of your said orator,and has never paid your orator one single thing as a compensation for all the loss and inconvenince to which he has been subjected by reason of said contract,so fraudulently

procured, as aforesaid; and your orator will furthur represent and show unto your honor that,since the said Arthur has refused to perform his part of the contract, he has called upon said Arthur for a surrender of the said contract as aforesaid,but although said Arthur refuses to mine said ore,he also refuses to surrender the said contract.

Your orator is advised that he is remediless,save in a court of chancery,that he has a right to maintain this suit and have said contract as aforesaid recinded,cancelled and set aside, and for the fraud practiced by the said Artur upon your said Orator resulting in damages to him,he has a right to recover such damages as acording to the proof he is shown to have sustained.

To this end he therefore prays that the said Dr.M.Arthur be made party defendant to this bill of complaint,that he answer the same fully and completely,but not on oath,that being expressly waived,that,as the said Arthur is a non-resident,an order of publication be duly made,published and posted as the law in such cases directs,that upon a hearing the said contract be declared void,annulled and setaside, that if the said Arthur shall personaly appear in court and answer according to the order of publication, that your orator be given a judgement against the said Arthur in such sum as under the proof produced your orator shall show himself to be entitled,and that all other relief be granted your orator that the nature of the case may demand,and he will ever pray &c.

Pennington Bros. P.Q.

B.F.Kincaid, Complainant.

vs.: In Chancery

Dr.M.Arthur, Defendant.

1900. 2nd May Rules bill filed
Spa not executed & O.P.
& Contd.

" 1st June Rules O.P.
Complete & Cause set
for hearing

E.W. PENNINGTON. ROBT. L. PENNINGTON.

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GAP, VA.

B. F. Kincade complt
vs. } In Chancery
M. Arthur Defdt

This cause came on this day to be heard upon the bill of the complainant; and it appearing to the court that an order of publication has been duly ported and published as required by law; and by consent of parties by their attorneys, the said complainant by his attorneys, Pennington Bros; and said Defendant by J. H. L. Morrison his attorney, it is adjudged, ordered and decreed that the contract between said complainant and Defendant dated December, 14th 1898 and all other contracts between them be and the same is hereby annulled, vacated and set aside and the said Complainant is hereby restored to all his former estate and interest in and to the real estate and ores and minerals on or in the lands in said bill mentioned free from all

claims of said defendant arising out of and by virtue of said contract dated as aforesaid, or by virtue of any other contract.

And by consent of said parties through their attorneys it is ordered that said complainant pay all the taxable costs of this suit, except attorneys fees; and this cause is stricken from the docket.

Pennington Bros.
J. H. S. Morrison,

B. F. Kincaid

vs. } Decree Final

M. Arthur

En-on C.O.B. No f 347

Enter this
J. T. A. W. Sharpe
June 8

THIS AGREEMENT, made this the 14th day of December 1898, by and between B. F. Kincaid of the first part, and Dr. M. Arthur, of the second part,

Witnesseth: That for and in consideration of one dollar Cash in hand paid by the party of the second part, which is hereby acknowledged by the party of the first part, and the royalties hereinafter mentioned, which are hereby reserved by the party of the first part, The party of the first part does hereby let, demise and lease unto the party of the second part for a term of five years from the date hereof, the exclusive right to mine, dig, and remove any and all Iron Ore from such seams or beds of iron ore on the below described tract of land. And the lessee Dr. M. Arthur, shall during the term of this lease have the exclusive right to enter upon and right of way over any lands of the Lessor for the purpose of mining and removing Iron Ore from the land below described..

The party of the second part covenants and agrees to pay unto the party of the first part the sum of 10 cents royalty per ton of 2240 pounds for each and every ton of Iron Ore mined and removed from the lands of the party of the first part.

The Lessee shall during the term of this lease have the right to use such timber on said land as may be necessary for mining operations.

The land hereby leased lies and is situate in the County of Lee State of Virginia and described as follows.

Known as the Alexander Ewing Farm, situated four miles in a direct line from Hubbard Springs. (636 acres) Mining to be done Without any ingress to the farming lands or the house ent. The weights to be ascertained by railroad scales and settlement to be made monthly

To have and to hold unto the said Dr. M. Arthur his heirs and assigns under the terms herein stated for the full term of five years.

Witness my hand this 14th day of December 189 8 .

Witness.
S S Ely

B. F. Kincaid
S S Ely

M. Arthur

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 301.

In the Clerk's Office of the Circuit Court of the County of Lee on the 27th day of April 1900 ~~189~~.

B. F. Kincaid Plaintiff,

against

Dr M Arthur Defendant.

} In Chancery

The object of this suit is to rescind a certain Contract for the lease of the Iron ore on the lands of the plaintiff, and to have said Contract set aside

And an affidavit having been made and filed that the defendant Dr M Arthur is not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the South-West Virginian, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the ~~Circuit~~ County Court.

A copy—Teste:

Pennington Bros p. q. A. B. Munsey Clerk.

FORM NO. 301.

B. F. Kincaid

vs. { ORDER OF PUBLICATION.

Dr M Arthur

Virginia Lee County to-wit
I A.B. Munsey Clerk of the Circuit Court for Lee County do hereby certify that I posted a copy of the within order of Publication at the front door of the court house of Lee County on the 1st day of the May term of the County Court of Lee County.
Given under my hand this the 21st day of May 1900.

A B Munsey Clerk

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 302.

In the Clerk's Office of the Circuit Court of the County of Lee.

B. F. Kincaid, Plaintiff,
against
Dr M Arthur, Defendant. } In Chancery

This day B. F. Kincaid personally appeared before me, A. B. Munsey Clerk of the said Court, and being duly sworn, made oath that D. M. Arthur defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 16th day of April 18~~18~~ 1900

A. B. Munsey Clerk

FORM NO. 302.

B. F. Kincaid

vs. { AFFIDAVIT FOR ORDER OF PUBLICATION.

Dr M Arthur

Pennington Bros p. q.

Filed April 16th 1900
A. B. Munsey Clerk

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon Dr. M. Arthur

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the 3rd Monday in May 1900, to answer a bill in chancery exhibited against him in our said court by B. F. Kincaid

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 27th day of April 1900, and in the 124 year of the Commonwealth.

A. B. Munsey Clerk

A Copy
Teste: A. B. Munsey Clerk

Form No. 300½.

.....

vs. { SUBPOENA
IN CHANCERY

.....

.....*p. q.*

To.....*Rules.*

.....*Court.*

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

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And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 27th day of April 1900, and in the 124 year of the Commonwealth.

A. B. Munsey clerk

Form No. 300½.

B. F. Kincaid

vs. { SUBPOENA IN CHANCERY

Dr M Arthur

Pennington Bros *p. q.*

To 2nd May *Rules.*

1900. circuit *Court.*

Not executed not
issued may the
9th 1900
W. J. McAdams D.C.

CERTIFICATE OF
ORDER OF PUBLICATION.

I, A. M. Goins, Editor of the SOUTHWEST VIRGINIAN, a weekly newspaper published at Jonesville, Lee County, Va., do hereby certify that the annexed notice was published in said paper once a week for four successive weeks, commencing on the 3rd day of May, 1900.

A M Goins, EDITOR.

FEE, $5.00

VIRGINIA—In the Clerk's Office of the Circuit Court of the County of Lee on the 27th day of April, 1900.

B. F. KINCAID, Plaintiff,
against
DR. M. ARTHUR, Def'd. } In Chancery.

The object of this suit is to recind a certain contract for the lease of the Iron Ore, on the lands of the plaintiff, and to have said contract set aside.

And an affidavit having been made and filed that the defendant, Dr. M. Arthur, is Not a resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof, be published once a week for four weeks in the Southwest Virginian, and that a copy be posted at the front door of the court house of this County on the first day of the next term of the County Court.

A copy—Teste:

A. B. MUNSEY, Clerk.

Pennington Bros. p. q. 5-3—00 4t.

ORDER OF PUBLICATION.

B. F. Kincaid

VS. | IN CHANCERY.

Dr M. Arthur

FEE $6-00

Pleffo Costs
Clerk 4.26
Tax 1.50
Printer 5.00
atty 15.00
$25.76

Pleffo Costs recovered
atty $15.00

B. F. Kincade

vs. Bill in Chancery

M. Arthur

June Term 1900 Decree final
See Chancery O. B. No 6
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